STREAMELEMENTS MERCHANT TERMS OF SERVICE

THESE TERMS AND CONDITIONS (THIS "**Agreement**") CONSTITUTE A BINDING CONTRACT BETWEEN THE ENTITY IDENTIFIED IN THE REGISTRATION PAGE ("**Merchant**") AND **Live Momentum Ltd., StreamElements Inc. and any other member of the StreamElements group** ("**SE**", "**we**", "**us**" and "**our**"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO BIND SUCH ENTITY TO THIS AGREEMENT. BY CLICKING "I AGREE" BELOW, OR BY OTHERWISE ACCESSING OR USING THE MARKETPLACE (AS DEFINED BELOW), YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY (THE DATE OF SUCH OCCURRENCE BEING THE "**Effective Date**") THIS AGREEMENT, AND OTHER SUPPLEMENTAL TERMS AND POLICIES REFERENCED HEREIN.

IF YOU DO NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE MARKETPLACE.

This Agreement is incorporated into and forms part of the StreamElements Terms of Use ("TOU"). For clarity, in the event of any conflict between this Agreement and the TOU, this Agreement shall prevail. Any capitalized terms not defined in this Agreement but defined in the TOU shall have the meaning given to them in the TOU.

SE reserves the right to modify this Agreement at any time by posting the modified Agreement at the SE.Merch Dashboard. Such modifications will be effective ten (10) days after such posting, and Merchant's continued use of the Marketplace shall constitute Merchant's agreement to such modifications.

At SE's sole discretion, any SE obligation hereunder may be performed (in whole or in part), and any SE right or remedy may be exercised (in whole or in part), by a SE Affiliate (defined below).

1. DEFINITIONS AND INTERPRETATION

This Agreement contains a range of capitalized terms, some of which are defined in this Section, and some of which are defined elsewhere. The Section and sub-Section headings in this Agreement are for convenience of reading only, and may not to be used or relied upon for interpretive purposes.

"**Content**" means any text, data, information, images, graphics, sounds, videos, audio clips, links, and/or other similar materials.

"**Customer**" means a person who purchases one or more Products through the Marketplace.

"**Documentation**" means any electronic manuals, specifications, and similar documentation made available by SE for use of the Marketplace (such as data format and data feed specifications).

"**Feature**" means any module, tool, and/or feature of the Marketplace (such as those providing for language translations, currency conversions, tax calculations).

"**Intellectual Property**" means any and all inventions, discoveries, improvements, works of authorship, technical information, data, technology, know-how, show-how, designs, drawings, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, databases, computer software and programs (including object code, source code, APIs, and non-literal aspects), algorithms, architecture, records, documentation, and other similar intellectual property, in any form and embodied in any media.

"**Law**" means any federal, state, foreign, regional or local statute, regulation, ordinance, or rule of any jurisdiction.

"**Marketplace**" means SE's proprietary online marketplace platform, called SE.Merch, which is made available via SE's website. For the purposes of this Agreement, references herein to "Marketplace" shall also be deemed to include each Merchant's Store (defined below) and all related APIs and other technology made available by SE to enable Merchant to display Products on the Marketplace. The Marketplace shall be deemed part of the Services, as defined in the TOU.

"**Merchant Content**" means Content (whether or not proprietary to Merchant) inputted by Merchant to, or otherwise generated by, its Merchant Account, and/or that is otherwise provided or made available by Merchant to Customers on the Marketplace and/or Store (such as Product descriptions and images, Product pricing and shipping information, Order statuses, Merchant's trademarks, service marks, brand names, and logos *etc.*).

"**Moral Rights**" means any rights of paternity or integrity, or any right to claim authorship of a work, to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, any work, whether or not such would be prejudicial

to the honor or reputation of the creator of the work, and any similar right, existing under judicial or statutory Law of any jurisdiction, or under any treaty.

"**Order**" means an order for the purchase of one or more Product(s), which is issued by Customer to Merchant via the Marketplace.

"**Product**" means a product incorporating Merchant Content listed by Merchant on Merchant's Store through the Marketplace.

"**Privacy Policy**" means SE's then-current privacy policy available at https://streamelements.com/privacy .

"**SE Affiliate**" means, with respect to SE, any person, organization or entity controlling, controlled by, or under common control with, SE, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, organization or entity, whether through the ownership of voting securities, by contract, or otherwise.

"**Store**" means an online, custom merchandise interface, used by Merchant through the Marketplace, under the terms and conditions of the License (defined below). The Store shall be deemed part of the Services, as defined in the TOU.

"**Update**" means an upgrade, update (such as a fix or patch), or other modification, improvement, enhancement or customization to or of the Marketplace.

2. MERCHANT ACCOUNT; STORE

In order to create a Store and display Products on the Marketplace, Merchant must register for an account by submitting the information requested in the applicable web form (a "**Merchant Account**"). Merchant represents and warrants that all information submitted during the registration process is, and will thereafter remain, complete and accurate. As between Merchant and SE, Merchant alone shall be responsible and liable for maintaining the confidentiality and security of its Merchant Account credentials, as well as for all activities that occur under or in the Merchant Account and Store. Merchant shall immediately notify SE in writing of any unauthorized access to, or use of, the Merchant Account and Store, or any other suspected or actual breach of security; but Merchant also acknowledges that SE may be unable to remedy the damage or loss (or otherwise assist) in such scenarios. Personally identifiable information received during the Merchant Account registration process and creation of a Store will be stored and used by SE in accordance with the Privacy Policy. For clarity, Merchant shall not make available any sensitive information to SE or to any user of the Marketplace, including without limitation through the Merchant Account and/or the Store.

3. ACCESS

Subject to the terms and conditions of this Agreement, SE grants Merchant a limited, non-exclusive, non-assignable, non-sublicensable, revocable right, during the Term (defined below), to access and use the Marketplace solely for Merchant's own internal business purposes of displaying and/or marketing Products through such Merchant's Store, in order to allow SE to (directly or indirectly) reproduce, adapt, modify, translate, publish, publicly perform, publicly display, sell, and/or distribute any such Products (collectively, the "**License**").

4. THIRD PARTY CONTENT AND SOURCES

The Marketplace may present, or otherwise allow Merchant to view, access, link to, and/or interact with, Content from third parties and other sources that are not owned or controlled by SE (such Content, "**Third Party Content**"). The Marketplace may also enable Merchant to communicate with the related third parties. The display or communication to Merchant of such Third Party Content does not (and shall not be construed to) in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by SE of such Third Party Content or third party, nor any affiliation between SE and such third party.

5. MERCHANT CONTENT

5.1. Responsibility. As between Merchant and SE, Merchant is solely responsible and liable for its Merchant Content, for the consequences of publishing it (including, but not limited to, for obtaining any consents from individuals appearing therein), and for the way in which it is used by others, and Merchant agrees to hold SE harmless, and expressly releases SE, from any and all liability arising from such Merchant Content. Merchant hereby represents and warrants that its Merchant Content does not, and will not, contain any robot, virus, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Marketplace. For clarity, Merchant Content shall be considered a User Submission as defined in the TOU.

5.2.   No Obligation by SE. SE has no obligation to accept, display, review or maintain any of Merchant's Merchant Content. SE may, without notice, edit, replace and/or delete Merchant's Merchant Content.

5.3.   No Endorsement. Merchant agrees not to represent or suggest, directly or indirectly, the endorsement of any Merchant Content by SE.

6.   PRODUCTS

6.1.   Products. It is clarified that SE shall be liable for each Product listed on the Store, except to the extent any liability arises from Merchant Content.

6.2.   No Obligation by SE. SE has no obligation to accept, display, review or maintain any Products. SE may, without notice, edit, replace and/or delete Product listings Additionally, SE may use mechanisms that rate or review, or allow Customers to rate or review, Products and SE may make these ratings publically available. SE will have no liability to Merchant for the content or accuracy of any ratings or reviews.

7.   ORDERS AND PAYMENT

7.1.   Orders. As between Merchant and SE, SE shall be the "merchant of record" for Orders, and shall be solely responsible for invoicing the Customer and charging any applicable taxes under an Order. SE shall be responsible for fulfillment of Orders. SE will collect all proceeds (including without limitation any shipping and handling charges and any taxes) paid by a Customer under an Order (the "**Proceeds**").

7.2.   Pricing. Merchant may determine the sale price for each Product displayed on such Merchant's Store (such price, the "**Sale Price**"), which shall not be lower than the price indicated by SE on the Marketplace for each Product, as such price may be amended by SE from time to time ("**Base Price**").

7.3.   Commission and Remittance. Of the Proceeds collected under an Order, SE shall be entitled to deduct and retain for itself an amount equal to the applicable Base Price for all Products sold in that Order (the "**Commission**"). The remainder of the Proceeds (the "**Merchant Proceeds**") shall be made available and reserved for the benefit of Merchant on a calendar monthly basis. On the date which is thirty (30) days after the end of the calendar month in which the Merchant Proceeds accrued, or on the monthly anniversary of such date (each, a "**Monthly Payout Date**"), Merchant may withdraw the applicable Merchant Proceeds by notifying SE in writing. The Merchant Proceeds shall continue to accrue until Merchant's actual withdrawal thereof. Notwithstanding the foregoing, Merchant's failure to withdraw any Merchant Proceeds for a continued period of twelve (12) months following receipt of such Proceeds by SE, shall be deemed as a waiver by Merchant of its rights to the then-accrued Merchant Proceeds and in such case, Merchant shall no longer be entitled to receive such Proceeds. SE shall also be entitled to withhold from any payments (including without limitation from the Merchant Proceeds) any and all amounts as may be required from time to time under applicable Law. Any payments by SE in relation to this Agreement (if any) shall be in US dollars. On each Monthly Payout Date, SE will provide Merchant with a sales report, reflecting the applicable month's sales with respect to such Merchant's Store.

7.4.   Cancellations, Returns and Refunds. SE may reject any Orders at its sole discretion. In addition, any returns and/or refunds of Products (if any) shall be handled and/or accepted by SE at its sole discretion, and carried out in accordance with SE's refund policy, available at https://streamelements.com/terms and as may be amended from time to time ("**Refund Policy**"). Merchant shall not make to any Customer, and SE shall not be bound by, any offer which in any way derogates from or exceeds the scope of the Refund Policy. Notwithstanding Section 7.3 above, in the event SE provides a refund to any Customer, then (i) if refunded to Customer prior to the Monthly Payout Date applicable to such Product, SE shall not be obligated to pay Merchant any Merchant Proceeds with respect to any such refunded Product; and (ii) if refunded to Customer after the applicable Monthly Payout Date, SE shall offset such refunded amount against the Merchant Proceeds due to Merchant on the next Monthly Payout Date on which Proceeds are paid to such Merchant.

8.   FEATURES

All references herein to the "Marketplace" shall be deemed to include its Features as well. SE reserves the right to remove, modify, and/or add Features at any time, without any notice or obligation to Merchant, and for any reason whatsoever. Some Features may in any event be limited, suspended or restricted by geography, volume, duration or any other criteria decided by SE in its sole discretion. Moreover, if SE determines that Merchant is in breach of any provision of this Agreement, SE reserves the right to block Merchant from certain Features at SE's sole discretion. SE makes Features available because it believes it enhances the user experience of the Marketplace; but Merchant acknowledges and agrees that just because SE makes a Feature available, it does not mean SE endorses, or can otherwise controls, every manner in which such Feature is used. A new or modified Feature may be accompanied by separate or additional terms and

conditions, in which case such terms will (as determined in such terms and conditions) apply instead of, or in addition to, this Agreement. SE may in its sole discretion charge for new Features.

9. OWNERSHIP AND CONTENT LICENSE

As between Merchant and SE, Merchant is the sole and exclusive owner of its Merchant Content. Notwithstanding such ownership:

(A) Merchant hereby grants SE and all SE Affiliates a worldwide, assignable, non-exclusive, royalty-free, fully paid-up, sublicensable (through multiple tiers of sublicensees), irrevocable and perpetual license, in any media format and through any media channels (now known or hereafter developed):
(a) to access and use Merchant Content to perform under this Agreement, including without limitation to (directly or indirectly) reproduce, adapt, modify, translate, publish, publicly perform, publicly display, sell, and/or distribute any and all Merchant Content and/or Products, and/or to provide Merchant with the functionality of the Marketplace and/or Store and any technical support, if applicable; and
(b) to access and use Merchant Content on an aggregated or otherwise anonymous basis for improving the Marketplace and/or Store, marketing and promoting the Marketplace and/or Store, analytics, and generally research and development (including after the Term of this Agreement),
((a) and (b) collectively, the "**SE License**").

(B) To the extent Merchant has any Moral Rights in or to any of its Merchant Content, Merchant hereby irrevocably waives (and agrees never to assert) against SE, a SE Affiliate, SE's licensors and suppliers, and/or any other Marketplace user, any such Moral Rights. The provisions of this subsection (B) shall survive termination of this Agreement.

10. TERM AND TERMINATION

10.1. Term. This Agreement commences on the Effective Date and shall continue in full force and effect until terminated in accordance herewith (the "**Term**").

10.2. Termination for Convenience by SE. SE reserves the right to immediately terminate this Agreement, or otherwise modify, suspend or discontinue Merchant's access to and use of the Marketplace and/or Store (or any part thereof), for any reason whatsoever, at any time, upon notice to Merchant, and Merchant agrees that SE shall have no liability to Merchant for any such termination, modification, suspension, or discontinuance.

10.3. Termination for Convenience by Merchant. Merchant may terminate this Agreement at any time and for any reason, but only by giving SE thirty (30) days' prior written notice, at merch-stores@streamelements.com. If Merchant objects to any term or condition of this Agreement or any subsequent changes thereto, or becomes dissatisfied with the Marketplace and/or Store in any way, Merchant's sole remedy is to terminate this Agreement.

10.4. Termination for Breach. Each party may terminate this Agreement immediately upon written notice to the other party: (a) if the other party commits a material breach under this Agreement and fails to cure that breach within thirty (30) days after receipt of written notice specifying the material breach; and/or (b) if the other party is declared bankrupt by a judicial decision, or, in the event an involuntary bankruptcy action is filed against such other party, it has not taken, within sixty (60) days from service of such action to such party, any possible action under applicable law for such filed action to be dismissed.

11. CONSEQUENCES OF TERMINATION; SURVIVAL

Upon termination of this Agreement, the License will automatically terminate and be deemed revoked, and Merchant shall immediately cease use of the Marketplace and Store. Sections 5, 11 and 12 shall survive termination of this Agreement, as shall any right, obligation or provision that is expressly stated to so survive, or that by its nature ought to survive. Termination shall not affect any rights and obligations rightfully accrued as of the effective date of termination.

12. RELATIONSHIP.

The relationship of the parties is solely that of independent contractors. Nothing in this Agreement shall be deemed to create any employment, fiduciary, joint venture, agency or other relationship between the parties. Customers are customers of SE. The relationship between Customers and SE is independent of any possible relationships and agreements between Merchant and Customer, who may visit other websites of the Merchant. Therefore, all Customer Orders and related matters are governed solely by the rules, guidelines and business practices of SE.

Last Updated: October 2019